IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5419 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BABUBEN SHANTILAL SHAH & 2 - Petitioner(s)
Versus
KANCHANLAL SHANTILAL SHAH & 1 - Respondent(s)

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Appearance :
MR JITENDRA M PATEL for Petitioner(s) : 1 - 3.
MR JAYESH M PATEL for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 10/07/2006

ORAL JUDGMENT

1. By way of this petition under Articles 226 and 227 of the Constitution of India, the petitioners have challenged the legality and

validity of the judgment and order passed by the Deputy Secretary (Appeals), Revenue Department, State of Gujarat, Ahmedabad dated 5.5.1995 passed in Revision Application No.SRD-39/ 1994 in allowing the said revision application and quashing and setting aside the order passed by the Collector, Vadodara dated 16.8.1994 passed in Revision No.CTS.RA/25 of 1993 and restoring the order passed by the Deputy Collector, Dabhoi dated 20.7.1993 passed in CTS-Appeal No.7 / 1993.

2. The dispute is with regard to revenue entry being City Survey No.635 with respect to the property bearing City Survey No.38 paiki Tikka No.6/1 situated at Dahoi Kasaba. The property in question was owned by one Gulabchand Nathabhai Roopchand who sold the property in question to Nathalal Jivchand by registered sale deed dated 26.1.1914 and said Nathabhai Jivchand had expired in the year 1954 and by succession the widow of Nathalal Jivchand viz. Maniben become absolute

owner and name of said Maniben – widow of Nathalal Jivachand was mutated in the city survey record. Said Maniben expired on 4.10.1955 leaving behind her two daughters namely Radhikaben Manilal Shah and Lilaben Mathurdas Shah. Said Lilaben Mathurdas Shah expired on 28.1.1977 and on death of Radhikaben Manilal Shah, the property in question was mutated in the names of Babuben Shantilal Shah and Jhasudben Balchand Shah. There was partition amongst them. Thereafter, Babuben Shantilal Shah by release deed relieved herself in favour of said Jhasudben Balchand Shah by registered release deed dated 19.9.1986 and necessary entry was also mutated in the city survey record on 13.11.1986. According to the petitioners, thus, said Jhasudben – petitioner No.2 become sole owner and proprietor of the said portion of the suit property. Thereafter, Jhasudben i.e. petitioner No.2 by registered sale deed dated 18.7.1990 sold the property in question in favour of the petitioner No.3

Sumitraben Rajendrabhai Shah for consideration of Rs.32,551/-. The name of said Sumitraben was mutated in the city survey record vide Entry No.651 dated 10.8.1990. The respondent – son of Babuben challenged the aforesaid entry No.635 dated 10.8.1990 which was in favour of Sumitraben on the basis of the registered sale deed dated 18.7.1990 before the Deputy Collector being CTS Appeal No.7 of 1991 by contending interalia that as the property in question was an ancestral property, Babuben could not have released the said property in favour of Jhasudben without his consent. The Deputy Collector, Dabhoi accepting the contention on behalf of the petitioner, allowed the said appeal and set aside the City Survey Entry No.635 by holding that City Survey Superintendent has not considered the provisions of Hindu Succession Act and the share of the respondent herein – son of Babuben. Being aggrieved and dissatisfied with the order passed by the Deputy Collector, Dabhoi dated 20.7.1993

passed in CTS Appeal No.7 of 1991, the petitioners preferred the revision application before the Collector, Vadodara being Revision Application CTS.RA NO.25 of 1993 and the Collector, Vadodara by his judgment and order dated 16.8.1994 allowed the said revision application by quashing and setting aside the order passed by the Deputy Collector, Dabhoi by holding that if the respondent claims any right, title and interest in the property in question, he is required to approach the Civil Court and obtained appropriate order from the Civil Court. Being aggrieved and dissatisfied with the judgment and order passed by the Collector, Vadodara dated 16.8.1994 passed in CTS.RANo.25 of 1993 the respondent No.1 herein preferred further revision application before the State Government being Revision Application No.SRD/39 of 1994 and the Deputy Secretary (Appeals), Revenue Department, State of Gujarat, Ahmedabad by his judgment and order dated 5.5.1995 allowed the

said revision application and quashed and set aside the order passed by the Collector, Vadodara dated 16.8.1994 passed in Revision Appeal No.25 of 1993 and restoring the order passed by the Deputy Collector, Dabhoi dated 20.7.1993. Being aggrieved and dissatisfied with the judgment and order passed by the Deputy Secretary (Appeals), Revenue Department, State of Gujarat, the petitioners have preferred the present Special Civil Application under Articles 226 and 227 of the Constitution of India.

3. Shri J.M.Patel, learned advocate appearing on behalf of the petitioners has vehemently submitted that the Deputy Secretary (Appeals), Revenue Department, State of Gujarat has materially erred in entering into the disputed question of title while dealing with the dispute with regard to mutation entry. He has also submitted that there was registered sale deed in favour of Jhasudben by Babuben which was not

challenged by the respondent before any competent court. Thereafter, the property in question came to be sole by said Jhasudben in favour of the petitioner No.3 by registered sale deed and necessary entry was mutated in the City Survey record on the basis of the registered sale deed. Once there is registered sale deed and unless and until the registered sale deed and/ or released deed is challenged by the respondent before the competent civil court and the rights are crystallized between the parties, the competent authority is bound to give effect to the release deed and subsequently, the sale deed in the revenue record / city survey record. Under the circumstances, it is requested to allow the present Special Civil Application .

4. Shri Jayesh Patel, learned advocate appearing on behalf of the respondent No.1 has vehemently submitted that the respondent No.1 son of Babuben was major and the property in question was

ancestral property and therefore, said Babuben could not have released the property in question in favour of Jhasudben without his consent as he was having share in the property in question under the provisions of Hindu Succession Act. It is submitted that when initial release deed itself was bad in law, subsequent transaction is also bad in law and therefore, it is submitted that the Deputy Secretary (Appeals),Revenue Department as well as Deputy Collector have rightly set aside the entry No.635 and therefore, it is requested to dismiss the present Special Civil Application.

5. Shri Dipen Desai, learned AGP for the respondent – State Authority has tried to support the judgment and order passed by the Deputy Secretary (Appeals), Revenue Department, State of Gujarat.

6. Heard the learned advocates appearing on behalf of the respective parties..

7. It is not in dispute that there was release deed by Babuben in favour of Jhasudben dated 19.9.1986 and necessary entry was also made in the city survey record on 13.11.1986. The said release deed has never been challenged by the respondent No.1 before any competent Civil Court. Thereafter, the property in question came to be sold by the petitioner No2 in favour of the petitioner No.3 by registered sale deed dated 18.7.1990 for consideration of Rs.37,551/- and necessary entry was also issued in the city survey record vide Entry No.635 dated 10.8.1990. The name of the petitioner No.3 was also mutated in the city survey record on the basis of the registered sale deed. It is required to be noted that the respondent No.1 has also not challenged the sale deed in favour of the petitioner No.3 before the competent civil court. While dealing

with the dispute with regard to the entry, the revenue authority is not required to go into the legality and validity of the transaction and/or enter into the disputed question of title. The disputed question of title is required to be decided by the Civil Court. If the respondent No.1 is of the opinion that he has got any right, title or interest in the property in question which was released by said Babuben i.e. his mother in favour of said Jhasudben illegally, and/ or dehors the provisions of Hindu Succession Act, in that case, the appropriate remedy for the respondent No.1 to approach Civil Court for establishing his rights. However, till any decision is rendered by the Civil Court crystallizing the rights of the parties, necessary entry is required to be made on the basis of the registered sale deed. The Deputy Secretary (Appeals), Revenue Department, State of Gujarat has materially erred in not considering the said aspect and has materially erred in

quashing and setting aside the order passed by the Collector, Vadodara by which the Collector, Vadodara has observed that it is ultimately for the respondent No.1 herein to approach the Civil Court for establishing his rights. Under the circumstances, the judgment and order passed by the Deputy Secretary (Appeals), Revenue Department, State of Gujarat is held to be beyond the scope and ambit of the dispute with regard to the mutation entry, hence the same is required to be quashed and set aside and the judgment and order passed by the Collector, Vadodara is required to be restored.

8. With above observations and for the reasons stated hereinabove, the petition succeeds. The judgment and order passed by the Deputy Secretary (Appeals), Revenue Department, State of Gujarat dated 5.5.1995 passed in Revision Application No.SRD.39 of 1994 is hereby quashed and set aside and the order dated 16.8.1994 passed by the

Collector, Vadodara passed in CTS.RA. No.25 of 1993 is hereby restored and consequently, the Entry No.635 is also restored. It is, however, made clear that if any suit is filed by the respondent No.1 and then, the parties are bound by the judgment and decree that may be passed by the Civil Court and necessary entry can be made on the basis of the judgment and order that may be passed by the competent Civil Court.

9. Rule is made absolute to the aforesaid extent, however, there shall be no order as to costs.

[M.R.Shah, J.]

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